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No. 63464-0-1

COURT OF APPEALS, DIVISION ONE  
STATE OF WASHINGTON

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In re the Marriage of:

ALI GANJAIE

Petitioner/Appellant,

v.

KATHERINE GANJAIE

Respondent

Superior Court No.: 07-3-08410-3 SEA

2009 SEP 18 PM 2:36

FILED  
CLERK OF COURT  
STATE OF WASHINGTON

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RESPONSE BRIEF OF RESPONDENT, KATHERINE GANJAIE

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**A. ASSIGNMENTS OF ERROR**

The Respondent, Katherine Ganjaie submits that the court below did not error in its ruling and is not seeking review.

**B. STATEMENT OF THE CASE**

This matter was tried in King County Superior Court before the Honorable Patricia Clark and final orders were signed and entered April 8, 2009.

On this appeal the Appellant, Ali Ganjaie has elected not to provide this court with a verbatim report of the proceedings. No transcript of the trial proceeding is provided or is before this court. Appellant's Designation of Clerk's Papers lists various documents for this court's reference.

Appellant assigns seven separate claims of error by the trial court.

**C. ARGUMENT**

**1. The Standard for Review is Abuse of Discretion**

The standard of review is abuse of discretion, meaning that a decision that is manifestly unreasonable or based on untenable grounds, including an erroneous view of the law. *McCausland v. McCausland*, 129 Wn. App. 390, 118 P.3d 944 (2005). The abuse of discretion is

applied to a discretionary ruling made by the trial court after determining the facts. In family law, most of the trial court's decisions after finding the facts are discretionary decisions. These include division of property, *Baker v. Baker* 80 Wn.2d 736, 498 P.2d 315 (1972); the amount of support *In re Marriage of Campbell*, 22 Wn.App. 560, 598 P.2d 1124 (1978); or maintenance, *Brossman v. Brossman*, 32 Wn.App. 851, 650 P.2d 246 (1982) review of parenting plan decisions, *In re Marriage of Kovacs*, 121 Wn.2d 795, 854 P.2d 629 (1993).

A trial court will be found to have abused its discretion only where the decision is "manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971); *Barfield v. City of Seattle*, 100 Wn.2d 878, 676 P.2d 438 (1984). "It is very difficult to establish an abuse of discretion." Washington Family Law Desk book, 2<sup>nd</sup> Edition, Section 65.4(2). Factual determinations will be affirmed if supported by substantial evidence. *In re Marriage of Stern*, 68 Wn.App. 922, 846 P.2d 1387 (1993) (rejecting an argument that an appellate court should review factual issues on a de novo basis). A trial court's findings of fact will not be disturbed on appeal if they are supported by substantial evidence. *Thorndike v. Hesperian Orchards, Inc.* 54 Wn.2d 570, 343

P.2d 183 (1959). Substantial evidence exists if there is sufficient evidence in the record to persuade a fair-minded, rational person of the truth of the declared premise. *Steffen v. Department of Licensing*, 61 Wn.App. 839, 812 P.2d 516 (1991).

Appellant, Mr. Ganjaie does not address the standard of review separately but does not appear to dispute that the proper standard of review is abuse of discretion and argues that on the facts of this case, the court committed seven separate errors.

**2. The Appellant's Decision Not To Provide A Complete Transcript of the Proceedings Precludes a Determination That There Was Not Adequate Factual Support For The Trial Court's Decisions.**

No transcript of the trial and what testimony was or was not presented is before this court. Because of the Appellant's failure to provide a transcript of the proceeding below, this precludes this court's review of the record for substantial evidence supporting the findings and the trial court's factual findings must be viewed as verities on appeal. *Morris v. Woodside*, 101 Wn.2d 812, 815, 682 P.2d 905 (1984). In the case of setting forth specific reasons for deviation from a standard child support calculation, lack of specific findings is not fatal, and in absence

of findings on a particular issue, the appellate court may look to oral opinion to determine the trial court's basis. *Matter of Marriage of Crosetto* 82 Wn.App. 545, 918 P.2d 594 (1996). Without reference to what was deficient in the factual findings at trial, Appellant's argument fails.

### **3. Response to Alleged Assignment of Error 1:**

After a full trial on the merits, the Appellant avers that the trial court erred by limiting the Father's time with the daughter. The Father argues that court failed to convene an evidentiary hearing related to an adequate cause determination.

The Respondent contends that the full trial on the merits was sufficient consideration by the trial court. The Respondent further contends that no adequate cause hearing was required as this was the initial determination of the parenting plan on dissolution, and not a modification of a parenting plan.

The Appellant claims that the Court below failed to conduct an adequate hearing, but fails to reference any portion of the trial record below. Again, because of the Appellant's failure to provide a transcript of the proceeding below, this precludes this court's review of the record for substantial evidence supporting the findings and the trial court's

factual findings must be viewed as verities on appeal. *Morris v. Woodside*, 101 Wn.2d 812, 815, 682 P.2d 905 (1984).

**4. Response to Alleged Assignment of Error 2:**

The Appellant contends that the trial court erred in calculating child support. Again, the Appellant makes references to alleged errors by the trial court, but makes no references to the record at trial. The only references made to the record are to the final order of child support. No reference to testimony or other evidence is stated by Appellant. Again, without reference to specific error, the ruling of the trial court should remain.

**5. Response to Alleged Assignment of Error 3:**

Appellant claims there was insufficient evidence to issue an order for protection for the daughter against the Appellant. In support of Appellant's position Appellant cites an unpublished opinion and claims he was deprived of his due process rights. The only citation to the record is to CP 79-81 (the Order for Protection entered by the court after trial on April 8, 2009).

The Respondent argues that the Appellant was afforded sufficient due process in that the order was entered after a full trial on the merit.

Without any specific reference to the record below, no response to the Father's unsupported allegations of error can be made.

**6. Response to Alleged Assignment of Error 4:**

Appellant claims an improper division of the community assets. Appellant alludes to various factual rulings by the court, but again, makes no cite to the record below. The Appellant makes further unsupported statements and is apparently attempting to offer additional testimony not presented at trial.

Again, a trial court will be found to have abused its discretion only where the decision is "manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971); *Barfield v. City of Seattle*, 100 Wn.2d 878, 676 P.2d 438 (1984). The Appellant has failed to show from the record that there has been an abuse of discretion on this issue.

**7. Response to Alleged Assignment of Error 5:**

Appellant claims the trial court abused its discretion in denying the Father's request for spousal maintenance. This claim is unsupported by any reference to the record below. Without specific reference to error, the Appellant has failed to meet his burden on appeal.

**8. Response to Alleged Assignment of Error 6:**

Appellant claims it was an error to award the Wife attorney's fees and sanctions. The only reference to the record made in support of this contention is the Appellant's reference to CP 61. Several other factual allegations are made, but are not supported by reference to the record below. Without specific reference to error below, the Appellant has failed to meet his burden on appeal.

**9. Response to Alleged Assignment of Error 7:**

Appellant claims an error in the distribution of the assets. This is essentially the same allegation as alleged error 4. Again, the Appellant makes references to alleged facts presented at the trial below, but makes no reference to the record to support the conclusions. Again, without specific reference to an error below, the ruling of the trial court remains in the discretion of the trial judge and will not be disturbed on appeal.

*Baker v. Baker* 80 Wn.2d 736, 498 P.2d 315 (1972).

**D. REQUEST FOR ATTORNEY'S FEES AND COSTS**

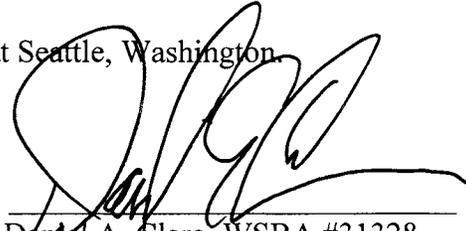
The Wife and Respondent, requests an award of all attorney's fees and costs incurred with this appeal under RCW 26.09.140 and RAP 18.1.

**E. CONCLUSION**

It is requested that this appeal be denied and the decision of the court below be affirmed. It is further requested that the Wife/Respondent be awarded all attorney's fees and costs incurred in association with this appeal.

Respectfully Submitted,

DATED: September 9, 2009 at Seattle, Washington.

A handwritten signature in black ink, appearing to read 'Daniel A. Clare', written over a horizontal line.

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